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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/530,683	09/02/2005	Frederic Impellizzeri	1811-64	7190
24106	7590	04/24/2006	EXAMINER	
EGBERT LAW OFFICES 412 MAIN STREET, 7TH FLOOR HOUSTON, TX 77002			KIM, JOHN	
			ART UNIT	PAPER NUMBER
			3733	
DATE MAILED: 04/24/2006				

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/530,683	Applicant(s) IMPELLIZZERI, FREDERIC	
	Examiner John Kim	Art Unit 3733	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 07 April 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-9 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-9 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 07 April 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>7/15/05</u> | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Information Disclosure Statement

The listing of references in the specification is not a proper information disclosure statement. 37 CFR 1.98(b) requires a list of all patents, publications, or other information submitted for consideration by the Office, and MPEP § 609.04(a) states, "the list may not be incorporated into the specification but must be submitted in a separate paper." Therefore, unless the references have been cited by the examiner on form PTO-892, they have not been considered.

The information disclosure statement filed 7/15/05 fails to comply with the provisions of 37 CFR 1.97, 1.98 and MPEP § 609 because a copy of the foreign patent has not been submitted. It has been placed in the application file, but the information referred to therein has not been considered as to the merits. Applicant is advised that the date of any re-submission of any item of information contained in this information disclosure statement or the submission of any missing element(s) will be the date of submission for purposes of determining compliance with the requirements based on the time of filing the statement, including all certification requirements for statements under 37 CFR 1.97(e). See MPEP § 609.05(a).

Specification

The disclosure is objected to because of the following informalities: Please remove the sections headed "related us application", statement regarding federally sponsored research or development" and "reference to microfiche appendix."

Appropriate correction is required.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-9 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Examiner notes applicant has amended claims (submitted 4/7/05) to conform with US patent format. However, examiner also notes there are MANY structural limitations that lack antecedent basis. Furthermore, there are several limitations that represent the same limitation, thus as claimed would be confusing (eg. fixation screw and tapping screw). Examiner highly urges the applicant to reformat the claims to the US patent application standard (MPEP 2173.05). Due to time limitations and since a majority of the limitations are stated in claim 1, the examiner will only point out the flaws in claim 1.

Claim 1 recites the limitation "holes" in lines 2, 4, 6, 7. There is insufficient antecedent basis for this limitation in the claim.

Claim 1 recites the limitation "fixation screws" in line 2. There is insufficient antecedent basis for this limitation in the claim.

Claim 1 recites the limitation "peripheries" in line 4. There is insufficient antecedent basis for this limitation in the claim.

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Claim 1 recites the limitation "inserts" in lines 4 and 7. There is insufficient antecedent basis for this limitation in the claim.

Claim 1 recites the limitation "tapping screws" in line 6. There is insufficient antecedent basis for this limitation in the claim.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-6, and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wolter (US Pat 6322562).

In regards to claim 1, Wolter discloses having a plate with holes (9), inserts (11), tapping screws (1) (claim 1); passage of holes have a conical shape (figure 2c) (claim 4), plate is made of titanium (col 5: 51) (claim 5), tapping screw having a head (4 and 5) with a conical threading tapping mechanism (5) (claim 8). Wolter fails to disclose having the inserts made of plastic biocompatible material (high-performance thermoplastic polymer or polyether ether ketone). It would have been obvious to one having ordinary skill in the art at the time the invention was made to have inserts made of plastic biocompatible material (high-performance thermoplastic polymer or polyether ether ketone), since it has been held to be within the general skill of a worker in the art

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to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. In re Leshin, 125 USPQ 416.

Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Wolter (US Pat 6322562) as applied to claim 1 above, and further in view of Michelson (US Pat 6139550).

Wolter discloses the claimed invention except for having plates and inserts made by molding from casting. Casting a known art to make plates. Michelson discloses the method of casting as one of many methods to make plates. It would have been obvious to one skilled in the art at the time the invention was made to construct the invention of Wolter, including making the plates by casting in view of Michelson in order to make plates at an economical rate.

Claims 7 and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wolter (US Pat 6322562) as applied to claim 1 above, and further in view of Bono (US Pat 5954722).

Wolter discloses the claimed invention except for having the inserts integrated in the plate by mechanical assembly and a mechanism to prevent rotation of the insert. Bono teaches of having an insert (16) mechanically assembled with the plate and screw which frictionally locks the insert into the plate (col 5:6-37). This prevents the screw from slipping from the plate. It would have been obvious to one skilled in the art at the time the invention was made to construct the invention of Wolter, including the inserts

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integrated in the plate by mechanical assembly and a mechanism to prevent rotation of the insert in view of Bono, in order to prevent the insert slipping from the plate.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. See PTO-892 for art cited of interest.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to John Kim whose telephone number is (571) 272-2817. The examiner can normally be reached on M-F 8-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eduardo Robert can be reached on (571) 272-4719. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

JK



PEDRO PHILOGENE
PRIMARY EXAMINER